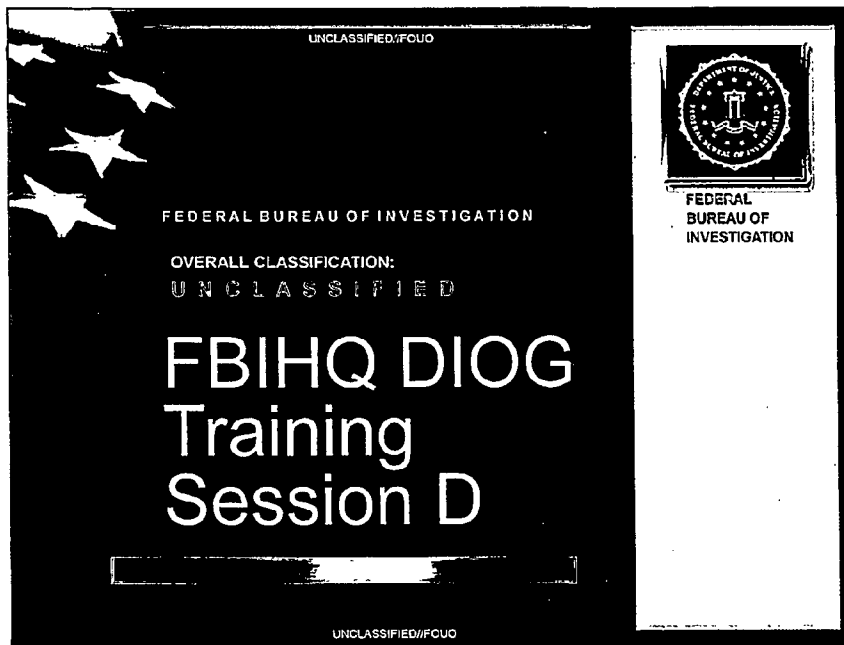






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## DIOG Section 6: Preliminary Investigations

| Investigation | Prediction                                                                                                                                       | Duration | Documentation | Approval   | Justification Review | SM         | Responsible Entity    |
|---------------|--------------------------------------------------------------------------------------------------------------------------------------------------|----------|---------------|------------|----------------------|------------|-----------------------|
| 1             | Investigation of the potential for the use of the Department of Defense's information systems to support the Department of Defense's operations. | 6 months | 20            | 2009-05-19 | 2009-05-19           | 2009-05-19 | Department of Defense |

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As of May 19, 2009

2



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## DIOG Section 6: Preliminary Investigations

### **Before initiating or approving a PI, you need to determine that:**

- An authorized purpose and adequate predication exists
- No investigative activity may be based solely on race, ethnicity, national origin, religion of the subject, or activities protected by the First Amendment
- It is an appropriate use of personnel and financial resources

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3

**Teaching Point:** Before initiating or approving the conduct of a preliminary investigation, an FBI employee or approving official must determine whether:

- A. An authorized purpose and adequate predication exist for initiating a preliminary investigation;
- B. The preliminary investigation is not based solely on the exercise of First Amendment activities or on the race, ethnicity, national origin or religion of the subject; and
- C. The preliminary investigation is an appropriate use of personnel and financial resources.

**DIOG 6.6**



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## DIOG Section 6: Preliminary Investigations

### **Predication for a PI includes “information or allegation” that:**

- A federal crime or a threat to the national security has, is or may occur, or
- An individual, group, property or activity is or may be a target of federal criminal activity or threats to the national security, and
- The investigation may obtain information relating to the subject(s) involvement in such activities or protect against the activity or threat

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4

**Teaching Point:** A preliminary investigation may be initiated on the basis of “information or an allegation” indicating the existence of a circumstance described as follows:

A. An activity constituting a federal crime or a threat to the national security has or may have occurred, is or may be occurring, or will or may occur and the investigation may obtain information relating to the activity or the involvement or role of an individual, group, or organization in such activity. (AGG-Dom, Part II.B.3)

B. An individual, group, organization, entity, information, property, or activity is or may be a target of attack, victimization, acquisition, infiltration, or recruitment in connection with criminal activity in violation of federal law or a threat to the national security and the investigation may obtain information that would help to protect against such activity or threat. (AGG-Dom, Part II.B.3)

**DIOG 6.5**



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## DIOG Section 6: Preliminary Investigations

### Objectives of PIs

- To determine if a federal crime has occurred, is occurring or will occur
- To determine if planning or preparation for a federal crime is taking place
- To obtain evidence
- To identify, locate and apprehend the perpetrators
- To identify threats to the national security

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5

**Teaching Point:** In preliminary investigations, the immediate objectives include such matters as: determining whether a federal crime has occurred or is occurring, or if planning or preparation for such a crime is taking place; identifying, locating, and apprehending the perpetrators; obtaining evidence needed for prosecution; or identifying threats to the national security. DIOG 6.2



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## DIOG Section 6: Preliminary Investigations

### Duration of Pls

- Must be concluded within six months
- Cannot be placed into a Pending Inactive status
- May be extended up to six months by the SAC (cannot be delegated, but an appropriately designated A/SAC may approve)
- Can be extended beyond one year by FBIHQ for "good cause"

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6

### Teaching Point:

**Extension:** A preliminary investigation must be concluded within six months of its initiation but may be extended for up to six months by the SAC. This extension authority may not be delegated by the SAC to the ASAC. Extensions of preliminary investigations beyond a year are discouraged and may only be approved by the appropriate FBIHQ Unit and Section for "good cause." (AGG-Dom. Part II B.4 a.ii) **Note:** [REDACTED]

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DIOG 6.7 B



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## DIOG Section 6: Preliminary Investigations

### **"Good Cause" considerations:**

- Has investigation revealed incriminating or exculpatory information?
- Has progress been made to determine if the PI should be closed or converted to FI?
- Will another six months reveal information to convert or close the PI?
- Is there predication now to convert or close PI?

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7

**Teaching Point:** The following factors must be used to determine if "good cause" exists to extend the preliminary investigation beyond one year:

- Whether logical investigative steps have yielded information that tends to inculcate or exculpate the subject;
- The progress that has been made toward determining whether a full investigation should be opened or the preliminary investigation should be closed;
- Whether, based on the planned course of investigation for the following six months, it is reasonably likely that information will be obtained that will lead to predication for a full investigation, thereby warranting an extension for another six months, or will lead to exculpatory information, thereby warranting closing the preliminary investigation; and
- Whether adequate predication has been developed to justify opening a full investigation or whether sufficient information has been developed that justify closing the preliminary investigation.

**DIOG 6.7 B**



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## DIOG Section 6: Preliminary Investigations

### Sensitive Investigative Matters

- Initiating a PI with a Sensitive Investigative Matter requires CDC review, SAC approval and [REDACTED]
- Must provide written notification to the USAO within 30 days of initiation
- If a SIM develops during PI, investigative activity must cease until CDC review and SAC approval is obtained

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8

**Teaching Point:** Sensitive Investigative Matter: The initiation of a preliminary investigation involving a sensitive investigative matter:

**a. Initiated by a Field Office:** requires CDC review, SAC approval [REDACTED]

Additionally, written notification must be made by the Field Office to the United States Attorney or by the appropriate FBIHQ Section to the DOJ Criminal Division or NSD as soon as practicable but in all events no later than 30 calendar days after the initiation of such an investigation. [REDACTED]

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[REDACTED] must cease until CDC review and SAC approval is acquired and notice is furnished as specified above.

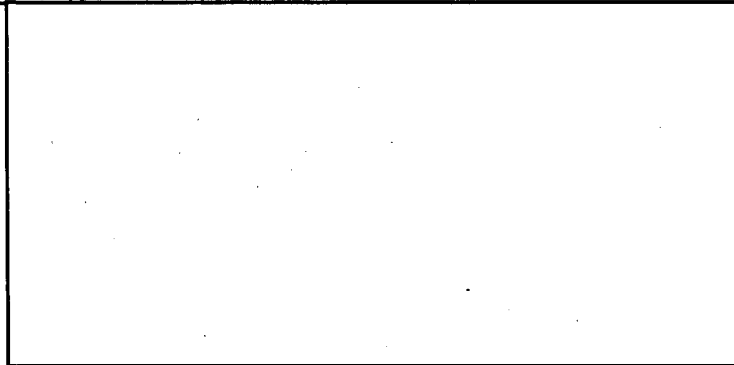
DIOG 6.7 A 3 a



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## DIOG Section 6: Preliminary Investigations

**Sensitive Investigative Matters include**  
**investigations of:**



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9

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## DIOG Section 6: Preliminary Investigations

### **Authorized Investigative Methods in a PI**

All lawful methods may be used in a PI, except for mail opening, a Rule 41 search warrant or a FISA order, electronic surveillance requiring a judicial order or warrant, or Title VII FISA requests. Authorized methods include, but are not limited to, those listed below:

- Obtain publicly available information
- Access and examine FBI and other DOJ records, and obtain information from any FBI or other DOJ personnel
- Access and examine records maintained by, and request information from, other federal, state, local, or tribal, or foreign governmental entities or agencies

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10



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## DIOG Section 6: Preliminary Investigations

### **Authorized Investigative Methods** (cont.)

- Use online services and resources (whether non-profit or commercial)
- Use and recruit human resources
- Interview or request information from members of the public and private entities
- Accept information voluntarily provided by governmental or private entities
- Engage in observation or surveillance not requiring a court order
- Grand Jury Subpoenas for telephone or electronic mail subscriber information

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11



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## DIOG Section 6: Preliminary Investigations

### Authorized Investigative Methods (cont.)

- Mail covers
- Physical searches of personal or real property where a warrant or court order is not legally required because there is no reasonable expectation of privacy
- Consensual monitoring
- Use of closed-circuit television, direction finders, and other monitoring devices
- Polygraph examinations
- Undercover operations

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12



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## DIOG Section 6: Preliminary Investigations

### Authorized Investigative Methods (cont.)

- Grand jury subpoenas, other subpoenas and National Security Letters
- Accessing stored wire and electronic communications and transactional records
- Pen registers and trap and trace devices

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13

**Teaching Point:** DIOG 6.9 B and DIOG 11 detail the requirements for utilizing these methods



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## DIOG Section 6: Preliminary Investigations

**Prior to using a method, you must consider:**

- Will the method further the investigation?
- Is the method the least intrusive and is it reasonable?
- Is it an appropriate use of personnel and resources?

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14

**Teaching Point:** Standards for Initiating or Approving the Use of an Authorized Investigative Method:

Prior to initiating or approving the use of an investigative method, an FBI employee or approving official must determine whether:

- A. The use of the particular investigative method is likely to further the purpose of the preliminary investigation;
- B. The investigative method selected is the least intrusive method, reasonable under the circumstances; and
- C. The method to be used is an appropriate use of personnel and financial resources.

**DIOG 6.8**



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## DIOG Section 6: Preliminary Investigations

### Administration of a PI

- File reviews every 90 days (60 days for probationary agents)
- Conversion to a Full Investigation must be documented on a EC with SSA approval
- Conversion to a Full Investigation with a SIM requires CDC review, SAC approval and FBIHQ notification
- Conversion to a Full investigation requires all relevant notifications to be completed (i.e. notification on USPER relating to a threat to national security)

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15

**Teaching Point:** File Review: Supervisory file reviews must be conducted at least once every 90 days in accordance with Section 3.4. File reviews for probationary FBI employees must be conducted at least every 60 days.

DIOG 6.7 E and 7.7



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## DIOG Section 6: Preliminary Investigations

### Closing a PI

- Close PI via EC (SSA must ensure all leads and methods have been completed or terminated)
- EC must state the reason for closing
- SSA approval [redacted]
- PI with a SIM requires SAC approval to close and [redacted]

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16

**Teaching Point:** Closing: When closing a preliminary investigation, the Field Office or FBIHQ will provide the reason for closing the investigation. When closing a preliminary investigation, the SSA or Unit Chief must ensure that all pending investigative methods have been completed/terminated (e.g., mail covers and pen register/trap and trace).

1. Closing a preliminary investigation initiated by a Field Office requires approval from the SSA. [redacted]

2. Closing a preliminary investigation initiated by FBIHQ requires approval from the Unit Chief and notification to the appropriate Field Office.

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3. Closing a preliminary investigation initiated by a Field Office involving a sensitive investigative matter requires approval from the SAC [redacted]

4. Closing a preliminary investigation initiated by FBIHQ involving a sensitive investigative matter requires approval from the Section Chief [redacted]

DIOG 6.7 C

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 PI Example

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- Your agent requests to open a PI?
- What action will you take?

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**Teaching Point** – Information may rise to the level of a PI (information or allegation of federal criminal activity) if you believe the woman as a reliable source. Consider whether the spouse is reporting an actual criminal violation, or if its only her suspicions or a possible “poison pen”. Could also be opened as an assessment.

#### DIOG 6.5

“Assessments authorized under the AGG-Dom do not require a particular factual predication but do require an authorized purpose. Assessments may be carried out to detect, obtain information about, or prevent or protect against federal crimes or threats to the national security or to collect foreign intelligence. (AGG-Dom, Part II and Part II.A)” **DIOG 5.1**

A preliminary investigation may be initiated on the basis of “information or an allegation” indicating the existence of a circumstance described as follows: An activity constituting a federal crime or a threat to the national security has or may have occurred, is or may be occurring, or will or may occur and the investigation may obtain information relating to the activity or the involvement or role of an individual, group, or organization in such activity. (AGG-Dom, Part II.B.3)

Before initiating or approving the conduct of a preliminary investigation, an FBI employee or approving official must determine whether:

- A.) An authorized purpose and adequate predication exist for initiating a preliminary investigation;
- B.) The preliminary investigation is not based solely on the exercise of First Amendment activities or on the race, ethnicity, national origin or religion of the subject; and
- C.) The preliminary investigation is an appropriate use of personnel and financial resources.

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 PI Example

- 
- What action will you take?

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Teaching Point-

 Meets the standards for a PI as it has information or allegation that federal criminal activity has occurred, it is not based on protected activities or demographics, and the investigation would be an appropriate use of personnel and resources. You can open a PI and utilize least intrusive methods if they are reasonable under the circumstances

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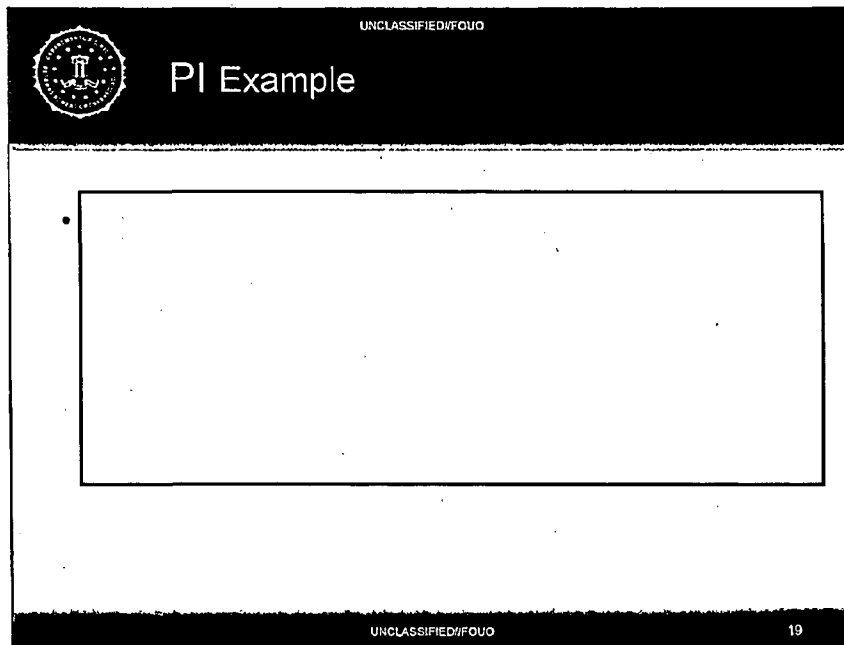
DIOG 6.7.A.3

If opened as a public corruption matter, must obtain review and approvals as a Sensitive Investigative Matter when opening.

The SIM requires CDC review, SAC approval, and written notification to the appropriate FBIHQ Unit Chief and Section Chief. Additionally, written notification must be made by the Field Office to the United States Attorney or by the appropriate FBIHQ Section to the DOJ Criminal Division as soon as practical but in all events no later than 30 calendar days after the initiation of such an investigation. 

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 must cease until CDC review and SAC approval is acquired and notice is furnished as specified above.



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**Teaching Point:** You can open a PI and utilize least intrusive methods if they are reasonable under the circumstances. If it meets the standard of a PI, open a PI. You do not have to begin with an assessment if you have predication.

Information received from a reliable source (another agency) concerning a "known terrorist," and the PI would be opened to determine contact between the terrorist and an individual in your territory. Meets the predication and standards to open a PI as the relationship may pose a threat to the national security, there are no protected issues and this would be an appropriate use of personnel and resources.

**DIOG 6.5, 6.6**



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## DIOG Section 7: Full Investigations

| Investigation | Predication                                                                                                                      | Duration                                              | Documentation | Approval                                                 | Justification Review                                   | SIM                                                                       | Responsible Entry   |
|---------------|----------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|---------------|----------------------------------------------------------|--------------------------------------------------------|---------------------------------------------------------------------------|---------------------|
| Full          | Initiated if there is an "articulable factual basis" that reasonably indicates circumstances described in DIOG Section 7.5 exist | No time limit; Factual predication determines outcome | EC            | Prig. SSA with FBIHQ (6 DOJ notice on HSB USPER matters) | Every 90 days; if probationary employee, every 60 days | CDC Review, SAC Approval; Notification to USAO or DOJ & HQ within 30 days | Investigative Squad |

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As of May 19, 2009

20



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## DIOG Section 7: Full Investigations

- Overview: The AGG-DOM authorizes a second level of investigative activity-predicated investigations. Full investigations may be initiated if there is an "articulable factual basis" of possible criminal or national threat activity.
- Three types
  - Single and Multi-subject
  - Enterprise
  - Positive Foreign Intelligence

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21

DIOG 7.1



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## DIOG Section 7: Full Investigations

**Predication to Open: an articulable factual basis of that reasonably indicates one of the following:**

1. An activity constituting a federal crime or a threat to the national security has or may have occurred, is or may be occurring, or will or may occur and the investigation may obtain information relating to the activity or the involvement or role of an individual, group, or organization in such activity.

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22

DIOG 6.5



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## DIOG Section 7: Full Investigations

**Predication to Open:** an articulable factual basis of that reasonably indicates one of the following (cont):

2. An individual, group, organization, entity, information, property, or activity is or may be a target of attack, victimization, acquisition, infiltration, or recruitment in connection with criminal activity in violation of federal law or a threat to the national security and the investigation may obtain information that would help to protect against such activity or threat.

3. The investigation may obtain foreign intelligence that is responsive to a Positive Foreign Intelligence Requirement (See DIOG classified Appendix for additional guidance).

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23

DIOG 6.5



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## DIOG Section 7: Full Investigations

### **Standards for Initiating or approving a FI:**

1. An authorized purpose and adequate predication exist
2. No investigative activity may be based solely on race, ethnicity, national origin, religion of the subject, or activities protected by the First Amendment
3. FI is an appropriate use of personnel and financial resources

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24

DIOG 7.6



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## DIOG Section 7: Full Investigations

- **Approval Process:**
  - The purpose and predication must be documented in the initiating EC, effective date when EC is approved
  - Requires prior SSA approval
  - Written notification to the FBIHQ substantive unit
    - A full investigation on a United States Person related to a National Security matter, FBIHQ Unit must notify DOJ NSD within 30 days
  - File Reviews
    - Every 90 days, probationary agents - 60 days
    - No annual LHM,
  - Other reporting notifications
    - Additional notifications may be required by division program guides

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25

DIOG 7.7 A 1



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## DIOG Section 7: Full Investigations

- **Investigative Methods**

- All methods from Preliminary Investigation plus:
  - Electronic Surveillance
  - Foreign Intelligence Collection Under Title VII and FISA
  - Physical Searches, mail openings with warrant or court order
  - Note re: Consensual Monitoring – in a state that requires two-party consent, the SAC must approve this as OIA under DIOG Section 17. Per DOJ policy, this OIA authority may be delegated to an ASAC or SSA – if done in writing.

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26



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## DIOG Section 7: Full investigations

### **STANDARDS FOR INITIATING OR APPROVING USE OF AN INVESTIGATIVE METHOD IN A FI (prior to use):**

1. The investigative method is likely to further the purpose of the FI
2. The investigative method is the least intrusive, reasonable under the circumstances
3. The method to be used is an appropriate use of personnel and financial resources.

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27

DIOG 7.8



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## DIOG Section 7 Full Investigations

- Investigations are deemed **"Sensitive Investigative Matters (SIMs)"** when they involve activities of:
  - A domestic public official (involving corruption or national security threat)
  - A political candidate (involving corruption or national security threat)
  - A religious or political organization, or individual prominent in such
  - News media
  - Matters having an academic nexus
  - Any other matter which should be brought to the attention of FBIHQ or DOJ, in the judgment of authorizing official

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28



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## DIOG Section 7: Full Investigations

- **Sensitive Investigative Matter - Full Investigation:**

- Requires CDC review, SAC approval and written notification to the appropriate FBIHQ substantive Unit Chief and Section Chief. EC must include Sensitive Investigative Matter in title.
- If sensitive matter arises after the initiation of a full investigation, investigative activity must cease until CDC review, SAC approval, and proper notice to FBIHQ.

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29

DIOG 7.7 A 3



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## DIOG Section 7: Full Investigations

- **Closing Full Investigations:**
  - All investigative activity is exhausted
  - SSA must assure that all pending investigative methods have been completed/terminated (mail covers, pens etc.)
- **Closing approvals**
  - SSA with notification to FBIHQ substantive Unit
  - Closing SIMS
    - SAC approval with written notification to FBIHQ substantive Unit and Section

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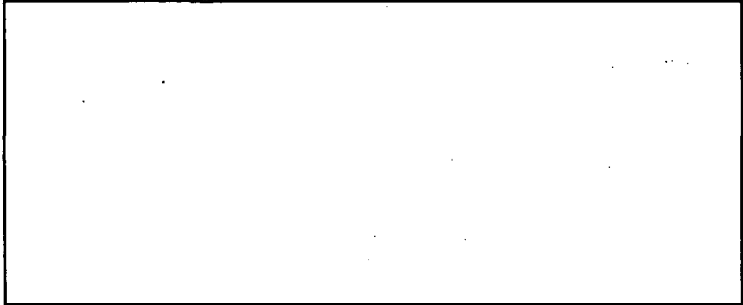
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## DIOG Section 7: Full Investigations

**Examples:**



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**Teaching Point:** Both examples have enough predication for a FI.

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Scenario

- What action would you take?

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**Teaching Point:** Would you document this information? You may check US Govt databases and document results. Based on initial call, there is not enough information to initiate an assessment. First Amendment rights prohibit collection of protected activities.

#### **DIOG 5.3**

No investigative activity, including assessments, may be taken solely on the basis of activities that are protected by the First Amendment or on the race, ethnicity, national origin or religion of the subject. If an assessment touches on or is partially motivated by First Amendment activities, race, ethnicity, national origin or religion.

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 [Redacted]

## Scenario

- [Redacted]

- Would you open an assessment?

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**Teaching Point:** Does this rise to the level of an assessment? Open for discussion. Arguments regarding free speech vs. allegation of threat are likely to be made. Consider First Amendment rights again. Consider a Type 5 assessment on Rahman.

DIOG 16 2 [Redacted]

[Redacted]

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#### F. Academic Nexus— [Redacted]

[Redacted]

[Redacted] The sensitivity related to an academic institution arises from the American tradition of "academic freedom" (e.g., an atmosphere in which students and faculty are free to express unorthodox ideas and views and to challenge conventional thought without fear of repercussion). Academic freedom does not mean, however, that academic institutions are off limits to FBI investigators in pursuit of information or individuals of legitimate investigative interest.

#### Academic Institutions [Redacted]

Scenario

- 

- What action would you take?
- Now your Agent requests to open Mohammad as a CHS.

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**Teaching Point:** Would you initiate an assessment or PI? You have enough predication to open a PI. Would you consider the investigation to be a Sensitive Investigative Matter / Academic Nexus standard? Yes, it is a SIM because MBOC is an organization recognized by the university.

**DIOG 10.2 F**

**Teaching Point:** Do you have to consider UDP at this point if CHS is not currently a member of the organization? No, up to this point, Mohammad's participation has been voluntary. He has not been tasked.

**DIOG 16.2**

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Do you have a sensitive UDP? Not until you task the CHS in a recognized student group which creates the "academic nexus."

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Scenario

- 
- What action do you take?

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Teaching Point

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**DIOG 16.2 C Specific Requirements for Sensitive Undisclosed Participation (Sensitive UDP)**

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## Investment Fraud Example

- Complainant calls and advises he believes he is a victim of an investment fraud. He has unsuccessfully attempted to have his initial investment of \$100K returned to him for the last six months. Complainant has provided his investment statements which show the \$100K has grown to \$105K.
- A check of the SAR database reveals several SARs filed by banks in the area concerning suspicious transactions totaling over \$750,000 in the past four months conducted by the company with which complainant invested.
- A check of NCIC reveals two prior fraud convictions on the subject.

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37

**Teaching Point:** Allegations indicate activities constituting violations of federal criminal law. No need for progressive activity from assessment to PI to Full if the information meets the standards and predication to open Full.

### DIOG 7.5

A full investigation may be initiated if there is an "articulable factual basis" that reasonably indicates one of the following circumstances exists:

- A. An activity constituting a federal crime or a threat to the national security has or may have occurred, is or may be occurring, or will or may occur and the investigation may obtain information relating to the activity or the involvement or role of an individual, group, or organization in such activity.

Before initiating or approving the conduct of a full investigation, an FBI employee or approving official must determine whether:

- A. An authorized purpose and adequate predication exist for initiating a full investigation;
- B. The full investigation is based on factors other than the exercise of First Amendment activities or the race, ethnicity, national origin or religion of the subject; and
- C. The full investigation is an appropriate use of personnel and financial resources."



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## DIOG Section 8: Enterprise Investigations

| Investigation      | Predication                                                                                                                                                                                                         | Duration                                              | Documentation | Approval                           | Justification Review                                    | SIM                                                                        | Responsible Entity  |
|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|---------------|------------------------------------|---------------------------------------------------------|----------------------------------------------------------------------------|---------------------|
| Enterprise<br>Full | Investigation is predicated when there is an articulable factual basis for the investigation that reasonably indicates the group or organization is engaged in Racketeering, IT, DT, or other. See DIOG Section 8.4 | No time limit; Factual predication determines outcome | EC            | DIOG SSA with FBIHQ and DOJ notice | Every 90 days; If probationary employees, every 60 days | CDC Review, SAC Approval, Notifications to USAO or DOJ & HQ within 30 days | Investigative Squad |

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As of May 19, 2009

38



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## DIOG Section 8: Enterprise Investigations

- May only be opened as a full investigation
- Focus on groups or organizations that may be involved in the most serious criminal activities or national security threats to examine the structure and scope, and nature of the group including:
  - Relationship to a foreign power;
  - Identity and relationship of its members, employees, or persons who are acting in furtherance of its objectives;
  - Its finances and resources;
  - Its geographical dimensions;
  - Its past and future activities;
  - Its capacity for harm

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39

**Teaching Points:** Cannot be conducted for sole purpose of collecting positive foreign intelligence

The **purpose** of an enterprise investigation is to examine the **structure, scope, and nature of the group or organization** including: its relationship, if any, to a foreign power; the identity and relationship of its members, employees, or other persons who may be acting in furtherance of its objectives; its finances and resources; its geographical dimensions; its past and future activities and goals; and its capacity for harm. (AGG-Dom, Part II.C.2)



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## DIOG Section 8: Enterprise Investigations

- Replaces the former REI and TEI investigations
- Includes any partnership, corporation, association or other legal entity, and any union or group of individuals associated, in fact although not a legal entity
- A PI may be used to determine whether a group/organization is an "Enterprise" – subject to the same requirements (for a PI)

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40

**Teaching Point:** Essentially no changes from how enterprise investigations were worked under former AG Guidelines and MIOG

Although an enterprise investigation may not be conducted as a preliminary investigation, **a preliminary investigation may be used to determine whether a group or organization is a criminal or terrorist enterprise** if the FBI has "information or an allegation" that an activity constituting a federal crime or a threat to the national security has or may have occurred, is or may be occurring, or will or may occur, and the investigation may obtain information relating to the activity of the group or organization in such activity. An assessment may also be initiated to determine whether a group or organization is involved in activities constituting violations of federal criminal law or threats to the national security.



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## DIOG Section 8: Enterprise Investigations

- Follow the same requirements as other predicated investigations
  - No investigative activity may be based solely on race, ethnicity, national origin, religion of the subject, or activities protected by the First Amendment
  - Must have articulable factual basis EI is an appropriate use of personnel and financial resources
  - Must utilize least intrusive methods to obtain evidence and/or intelligence

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41

**Teaching Points:** Like any assessment or predicated investigation, no enterprise investigative activity may be taken solely on the basis of activities protected by the First Amendment

Groups who communicate with each other or with members of the public in any form in pursuit of social or political causes— such as opposing war or foreign policy, protesting government actions, promoting certain religious beliefs, championing particular local, national, or international causes, or a change in government through non-criminal means, and actively recruit others to join their causes—have a fundamental constitutional right to do so. An enterprise investigation may not be initiated based solely on the exercise of these First Amendment rights.

Articulable defined more on next slide



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## DIOG Section 8: Enterprise Investigations

### **Predication to Open:**

The legal authority for an enterprise investigation is based on the predication wherein the group or organization may have engaged, or may be engaged in, or may have or may be engaged in planning or preparation or provision of support for the following:

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42

**Teaching Point:** The "articulable factual basis" for opening an Enterprise Investigation is met with the identification of a group whose statements made in furtherance of its objectives, or its content, demonstrate a purpose of committing crimes or securing the commission of crimes by others.

The group's activities and statements should be considered in combination in order to show this "articulable factual basis."



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## DIOG Section 8: Enterprise Investigations

- A pattern of racketeering activity (18 U.S.C. § 1961(5));
- International terrorism (AGG-Dom, Part VII.J, or other threat to the national security);
- Domestic terrorism (18 U.S.C. § 2331(5) involving a violation of federal criminal law;
- Furthering political or social goals wholly or in part through activities that involve force or violence and a violation of federal criminal law; or
- An offense described in 18 U.S.C. § 2332b(g)(5)(B) or 18 U.S.C. § 43.

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43

**Teaching Points:** Legal Authority granted through various means

The final bullet provides investigative authority on federal crimes of terrorism involving destruction of aircraft among other things and 18 USC 43 is regarding the use of force and violence and threats in animal enterprises

### DIOG 8.4



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## DIOG Section 8: Enterprise Investigations

|                                  |                                                                                                                                    |
|----------------------------------|------------------------------------------------------------------------------------------------------------------------------------|
| <b><u>Duration</u></b>           | No time limit --as long as necessary to achieve purpose                                                                            |
| <b><u>Documentation</u></b>      | EC                                                                                                                                 |
| <b><u>Approval</u></b>           | Prior SSA approval with FBIHQ and DOJ Notification (Counterterrorism division requires FBIHQ approval prior to SSA opening the EC) |
| <b><u>File Review</u></b>        | Every 90 day period (Probationary Agents every 60 days)                                                                            |
| <b><u>SIM</u></b>                | CDC Review, SAC approval, and notification to USAO and FBIHQ within 30 days                                                        |
| <b><u>Responsible Entity</u></b> | Investigative squads                                                                                                               |

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44

Teaching Point: Listed on first chart



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## DIOG Section 8: Enterprise Investigations

**The following authorized investigative methods can only be used in full/enterprise investigations:**

- Electronic Surveillance authorized by Title III, FISA, or Executive Order 12333
- Physical Searches, including Mail Openings, authorized by Rule 41, FISA, or Executive Order 12333

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45

**Teaching Point:** All lawful methods may be used in an Enterprise Investigation. Additional authorized methods include, but are not limited to, those listed below:

1. Obtain publicly available information;
2. Access and examine FBI/DOJ records and info
3. Access and examine other agency's records
4. Use online services and resources
5. Use and recruit CHSs;
6. Interview and request info from the public/ private entities;
7. Accept voluntarily provided info from public/private entities
8. Surveillance not requiring a Court Order;
9. FGJ Subpoenas for subscriber info (phone or email)
10. Mail Covers
11. Physical searches into areas that do not have an REOP
12. Consensual monitoring – now subject to legal review by CDC or OGC rather than AUSA; sensitive monitoring circumstances require DOJ approval



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## DIOG Section 8: Enterprise Investigations

### **CLOSING AN ENTERPRISE INVESTIGATION:**

1. SSA approval (if opened at HQ – Unit Chief) – SSA must ensure all investigative methods have been completed/terminated (CTD requires FBIHQ approval prior to SSA closing the EI)
2. Notice to FBIHQ Unit – UACB the EI is considered closed 30 days after notice to HQ (if opened at HQ – notice to FO)
3. If the EI involved a SIM, the SAC must approve the closing and written notification must be provided to FBIHQ Unit and Section (if initiated at HQ; Section Chief must approve – notice to FO) – UACB 30 days after HQ notice

DIOG 8.7.B

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46



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## DIOG Section 8: Enterprise Investigations

- As an SSA, would you authorize an enterprise investigation if:

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47

**Teaching Point:** OC—Most recognizable type of enterprise is organized crime

CTD -matter considered most serious of crimes

Animal rights—to learn about group, structure, finances in order to dismantle



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## DIOG Section 12: Assistance to Other Agencies

- Authorized to provide investigative assistance to other federal, state, local or tribal, or foreign agencies when the investigation has objectives consistent with the FBI's investigative objectives
- May provide assistance – even if it is not for one of the purposes identified as grounds for an FBI investigation or assessment – if providing the assistance is otherwise authorized by law
- May provide assistance to foreign agencies in the investigation of foreign law violations pursuant to international agreements
- May use appropriate lawful methods in any authorized investigative assistance activity

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48



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## DIOG Section 12: Assistance to Other Agencies

- Further authorized to provide technical and scientific assistance to all duly constituted law enforcement agencies, other organizational units of the Department of Justice, and other federal agencies
- Authorized investigative assistance with such agencies includes participation in joint operations and activities consistent with a "federal nexus"
- Assistance to a domestic or foreign agency requires appropriate case file documentation: (i) the name and type of agency; (ii) the investigative methods used; (iii) the opening and closing dates of the request; and (iv) notifications required for the investigative activity (use  to document assistance, when required)

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49



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## DIOG Section 12: Assistance to Other Agencies

### **The AGG-Dom permits FBI personnel to provide investigative assistance to:**

- A. Authorized intelligence activities of other USIC agencies;
- B. Any federal agency in the investigation of federal crimes, threats to the national security, foreign intelligence collection, or any other purpose that may be lawfully authorized;
- C. The President in determining whether to use the armed forces pursuant to 10 U.S.C. §§ 331-33, when DOJ-authorized;
- D. Collect information necessary to facilitate public demonstrations in order to protect the exercise of First Amendment rights and ensure public health and safety, when DOJ-authorized;
- E. State or local agencies in the investigation of crimes under state or local law where authorized by federal law (e.g., felonious killing of state and local law enforcement officer; violent crime against travelers; serial killings);

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50



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## DIOG Section 12: Assistance to Other Agencies

- F. State, local, or tribal agencies in the investigation of matters that may involve federal crimes or threats to national security, or for such other purposes as may be legally authorized; and
- G. Foreign agencies in the investigations of foreign law violations pursuant to international agreements, and as otherwise set forth below, consistent with the interests of the United States (including national security interests) and with due consideration of the effect on any United States person.
  - The FBI is further authorized to provide technical and scientific assistance to all duly constituted law enforcement agencies, other organizational units of the Department of Justice, and other federal agencies. 28 C.F.R. § 0.85(g).

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51



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## DIOG Section 12: Assistance to Other Agencies

### Standards for Providing and Approving Investigative Assistance to Other Agencies

- The determination of whether to provide FBI assistance to other agencies is both statutory and discretionary and must be based on consideration of the following factors:
  1. Assistance is within the scope authorized by the AGG-Dom;
  2. Assistance is not based solely on the exercise of First Amendment activities or on the race, ethnicity, national origin or religion of the subject; and
  3. Assistance is an appropriate use of personnel and financial resources.

DIOG Section 12.4

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52



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## DIOG Section 12: Assistance to Other Agencies

- **Required documentation in the "case file" for assistance to a domestic or foreign agency:**
  - the name and type of agency;
  - the investigative methods used;
  - the opening and closing dates of the request; and
  - notifications required for the investigative activity.

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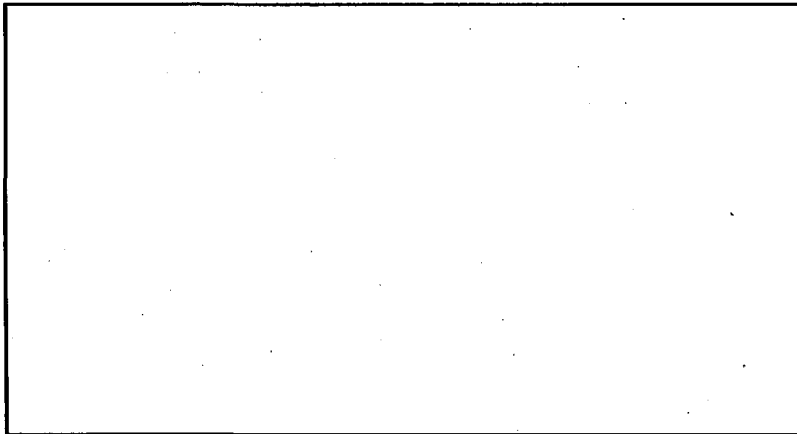
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53



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## DIOG Section 12: Assistance to Other Agencies



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54



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## DIOG Section 12: Assistance to Other Agencies

- **Why and when to use the** 
  - **Record Retention:** The use of form permits the FBI to create and maintain an AGG-Dom required database of records allowing the prompt retrieval of the status of the assistance activity (opened or closed), the dates of opening and closing, and the basis for the assistance activity.
  - **Document Dissemination of Unclassified Information:** The form should be used to document the dissemination of information to: USIC Agencies; U.S. Federal Agencies; State, Local, or Tribal Agencies; and Foreign Agencies.

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AGG-Dom, Part III.E.3 and DIOG Section 12.4

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55



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## DIOG Section 12: Assistance to Other Agencies

- Dissemination to Foreign Agencies must be in accordance with the FBI Foreign Dissemination Manual, dated May 23, 2008.
- Classified information must be disseminated pursuant to applicable federal law, Presidential directive, Attorney General policy and FBI policy.
- Dissemination of information to other agencies must be consistent with Director of National Intelligence directives, the AGG-Dom, DIOG Section 14, FBI Foreign Dissemination Manual, and any applicable MOU/MOA, law, treaty or other policy.

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56



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## DIOG Section 12: Assistance to Other Agencies

- **Sensitive Investigative Matter:** Any assistance to other agencies involving a SIM requires CDC review, SAC approval, and notification to the appropriate FBIHQ substantive UC and SC. If assistance is to a foreign agency, notification to the OIO UC and SC is also required.
- Additionally, FBIHQ must provide notice to the DOJ Criminal Division or NSD as soon as practicable, but not later than 30 calendar days after the initiation of any assistance involving a SIM (see classified appendix for additional notice requirements)

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57



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## DIOG Section 12: Assistance to Other Agencies

- **United States Intelligence Community Agencies:**
  - May provide investigative assistance or operational support to authorized intelligence activities of other USIC agencies
  - Assistance must be in compliance with interagency MOA/MOU
  - Prior SSA Approval required when assistance uses investigative methods beyond those authorized in assessments and must be documented using FD-999
  - Other limitations/approvals required for joint ops, SIM, particular investigative methods, specific technologies

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58

**Teaching Point:** Assistance to other agencies using an investigative method authorized only for predicated investigations requires supervisory approval at the same level required for the respective investigative method if used in an FBI investigation. Specifically, higher supervisory approval and notification requirements may exist for conducting a joint operation (e.g., investigative operations with the Department of Defense [DoD], Department of Homeland Security), a sensitive investigative matter, and using particular investigative methods as noted in Sections 10 and 11, and the Division policy guides. Assistance for investigative methods beyond those authorized in assessments must be documented in the FD-999. Approval for use of specific technologies is set forth in Section 12.6 below and the OTD Manual.



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## DIOG Section 12: Assistance to Other Agencies

- **United States Federal Agencies:**
  - May provide assistance to any other federal agency:
    - in the investigation of federal crimes or threats to the national security or
    - in the collection of positive foreign intelligence
    - for any other purpose that may be legally authorized
  - Technical assistance to any other federal agency must follow DIOG Section 12.6
  - Assistance must be in compliance with any MOA/MOU

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59

**Teaching Point:** DIOG Section 9 - in the collection of positive foreign intelligence, must have prior approval from FBIHQ CMS.



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## DIOG Section 12: Assistance to Other Agencies

- United States Federal Agencies (continued):
  - Actual or Threatened Domestic Civil Disorders (require prior AG approval)
  - Public Health and Safety Authorities in Relation to Demonstrations (require prior AG approval)
  - Prior SSA Approval required when assistance uses investigative methods beyond those authorized in assessments and must be documented using FD-999
  - Other limitations/approvals required for joint ops, SIM, particular investigative methods, specific technologies

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60



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## DIOG Section 12: Assistance to Other Agencies

- **State, Local, or Tribal Agencies:**
  - May provide investigative assistance in the investigation of matters that:
    - may involve federal crimes or threats to the national security (require a continuing federal nexus), or
    - for other legally authorized purposes (such as a specific federal statutory grant of authority)
  - May provide other material, expert personnel (NCAVC; Behavioral Science), scientific and technical assistance to state, local, and tribal agencies. (See 28 C.F.R. § 0.85[g] and DIOG Section 12.6)

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61

**Teaching Point:** Other legally authorized purposes (such as a specific federal statutory grant of authority such as that provided by 28 U.S.C. §§ 540—felonious killing of state and local law enforcement officer; 540A—violent crime against travelers; 540B—serial killings. (AGG-Dom, Part III.C)

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## DIOG Section 12: Assistance to Other Agencies

- **State, Local, or Tribal Agencies (continued):**

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62

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## DIOG Section 12: Assistance to Other Agencies

- **State, Local, or Tribal Agencies (continued):**
  - Assistance must be in compliance with MOA/MOU or treaties
  - Prior SSA Approval required when assistance uses investigative methods beyond those authorized in assessments and must be documented using
  - Other limitations/approvals required for joint ops, SIM, particular investigative methods, specific technologies

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63



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## DIOG Section 12: Assistance to Other Agencies

### Foreign Agencies:

- Legat's primary responsibility
  - Requests for assistance will likely come to the FBI through the Legat
  - Requests for assistance that bypass the Legat
    - the FBI employee must notify the Legat and OIO as required
- FBI may conduct investigations or provide assistance to investigations by foreign agencies
  - Consistent with U.S. interests
  - With due consideration on the effect on any U.S. Person
  - Following MOU/MOA, MLAT or other treaties

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64



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## DIOG Section 12: Assistance to Other Agencies

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### Foreign Agencies (continued):

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65

Teaching Point:

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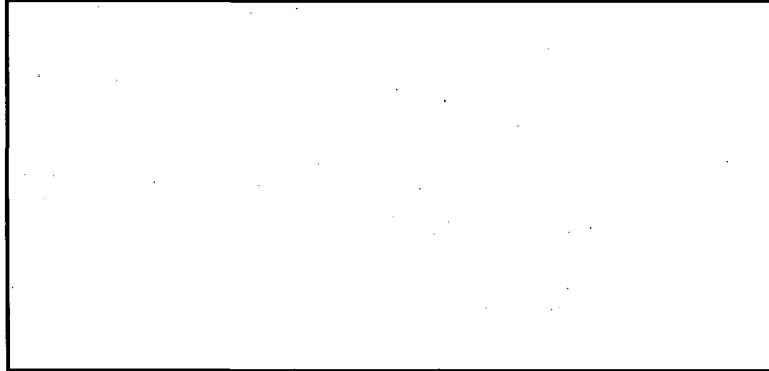
Other material and technical support – follow DIOG Section 12.6



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## DIOG Section 12: Assistance to Other Agencies

### Foreign Agencies (continued):



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## DIOG Section 12: Assistance to Other Agencies

### Foreign Agencies (continued):

|  |
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- All dissemination of information to foreign agencies must be conducted in accordance with the FBI Foreign Dissemination Manual

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67



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## DIOG Section 12: Assistance to Other Agencies

### **Standards for Providing and Approving Technical Assistance to Foreign, State, Local and Tribal Agencies**

- All technical assistance must be approved by the Director or designated official
- All technical assistance must be documented in an [redacted] and placed in an assessment file, predicated investigation file, a domestic police cooperation file, a foreign police cooperation file, or other investigative/technical assistance control file

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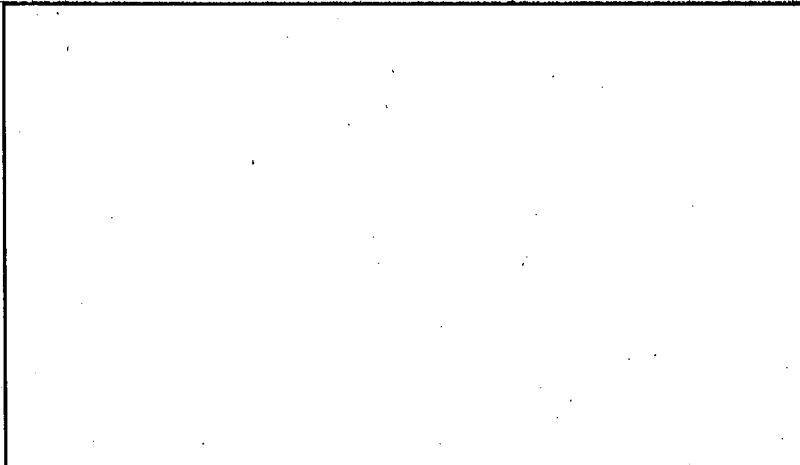
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68



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## DIOG Section 12: Assistance to Other Agencies



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69

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## DIOG Section 14: Overview Retention and Sharing of Information

- The creation and maintenance of authentic, reliable, and trustworthy records is a critical component of every FBI responsibility and function and is required by law.
- The FBI, like all other Federal agencies, is required by the Federal Records Act to "make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency." This practice of ensuring "adequate and proper documentation" is essential to efficient and economical agency operations by guaranteeing that information is documented in official files, where it will be accessible to all authorized staff that may need it.
- Without complete and accessible records, the FBI cannot conduct investigations, gather and analyze intelligence, assist with the prosecution of criminals, or perform any of its critical missions effectively.

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70

**Teaching Point:** We ought to document our activities. At the same time, for as long as I have been associated with the FBI, I have to say that I have thought we save entirely too much information and it often comes back to bite us.

In the book buying example used on Monday to analyze privacy and civil liberties concerns, if Stuart Andrews buys a book and a source so advises us, but we have nothing in our files on this person, is it worth keeping the information?

Is checking out Stuart Andrews in ACS "an essential transaction of the agency?" The Bassiouni case – and others that were not previously cited – would seem to support the retention of these records, if for no other reason than to have them in the event Mr. Andrews takes some future criminal action. But there is a tension between maintaining a record that on its face looks like First Amendment activity and keeping it for background purposes in case Andrews appears again in a similar context. From a privacy perspective, a shorter retention period, if retention is even appropriate, is always better than a longer one. Bear in mind, though, that Federal Records Act requirements may take precedence.



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## DIOG Section 14: Overview Retention and Sharing of Information

- The dissemination of records about U.S. citizens and legal permanent resident aliens that are accurate, complete, timely and relevant for agency purposes, to the extent that they can reasonably be so, is required by the Privacy Act.
- And without complete and accessible records on which to verify the accuracy, relevance and timeliness of information that the FBI disseminates, we cannot participate effectively in information sharing activities and we risk litigation from individuals adversely affected by the information.

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71

**Teaching Point:** In the past, you could probably count on the fingers of one hand, but certainly not more than two, the number of times people sued the FBI, or indeed, other agencies, for disseminating erroneous information that caused damages. But with the increased impetus to share information, the potential for litigation by individuals adversely affected by the dissemination of erroneous information is likely to increase, and if actual damages are demonstrated, the results could be significant. Steven Hatfill recently settled with the government for \$5.82 million.

The Privacy Act requires that we take reasonable steps to ensure that information we disseminate outside the Bureau is accurate, complete, timely and relevant. That can be difficult in certain circumstances, given the type of information at issue. With the impetus to create and disseminate IIRs and other intelligence products, moreover, this provision takes on more importance. We in the General Counsel's Office have advised that these reports should carry appropriate disclaimers indicating the reliability of the information and urging that the recipients take no action without confirming the substance of the information. As a general rule of thumb, moreover, when in doubt, leave out the identities of U.S. persons unless the names are necessary to understanding the information. You may not always be right in doing so, but as a matter of privacy law, you will never be wrong.



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## DIOG Section 14: Overview Retention and Sharing of Information

- Consistent with the Privacy Act and any other applicable laws and memoranda of understanding (MOU) or agreement (MOA) with other agencies concerning the dissemination of information, the FBI may disseminate information obtained or produced through its authorized activities
- All FBI information sharing activities undertaken by the FBI shall be in accordance with Corporate Policy Directive 12D, "FBI Sharing Activities with Other Government Agencies," and 95D "Protecting Privacy in the Information Sharing Environment," and any amendments thereto and applicable succeeding policy directives.
- The FBI must share and disseminate information as required by statutes, treaties, Executive Orders, Presidential directives, National Security Council directives, Homeland Security Council directives, DNI directives, Attorney General-approved policies, and MOUs or MOAs, as consistent with the Privacy Act

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72

**Teaching Point:** The Privacy Act contains 12 conditions of disclosure. Consent is, of course, the most ironclad basis on which to make disclosure, but it doesn't typically arise in our information sharing contexts. If you can shoehorn a disclosure into one of the other statutory bases, that's the way to proceed. So, for example, we can disclose Privacy Act information to another federal, state or local government agency for a civil or criminal law enforcement purpose under certain circumstances and disseminating information in this way provides a strong basis for finding that any release is appropriate. Another of the 12 conditions of disclosure is pursuant to a "routine use" that has been published by the FBI. Routine uses don't necessarily have to be routine, but we have to have given the public notice of them.

We have a very robust set of routine uses that permit us to disseminate information in a variety of contexts and to a variety of individuals, groups and agencies, both domestic and foreign. Our routine uses are available on the Privacy and Civil Liberties Unit website at [redacted] (Central Records System) and at [redacted] Blanket Routine Uses). Most of you are probably familiar with these, but it would be good to make sure the folks you train have some familiarity with them or at least with where to find them. PCLU attorneys are always available to answer questions about these routine uses. Bear in mind, though, that none of them is mandatory; routine uses are discretionary. We often field questions about whether we can release certain information, but sometimes the questions are "do we have to?" With respect to routine uses the answer is no.

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MOUs and MOAs are supposed to come through the General Law Unit for review and when they do, the Privacy and Civil Liberties Unit usually sees them. We have a number of standard privacy clauses that we recommend be inserted in MOUs and MOAs as appropriate, and it would be good to familiarize yourself with these as well.

b7E

The Bureau policies highlighted in this slide – 12D and 95D – are designed to work in tandem. The policy for information sharing with other government agencies acknowledges our responsibility to share terrorism and criminal information with our partners, but to do so in a way that protects the information privacy and other legal rights of Americans. Each qualifying information sharing activity with another government agency must be subject to a risk assessment to ascertain the legal risk from the activity and to develop a plan to mitigate those risks. One risk might be the impact on privacy and civil liberties. Recognizing that, the policy for protecting privacy in the information sharing environment requires that a governing document be drafted for each ISE information sharing activity that explicitly acknowledges this privacy requirement and that it be reviewed by the FBI Privacy and Civil Liberties Officer for compliance. It also contains responsibilities for Chief Division Counsels to make sure that our information sharing efforts comply with the law.

The requirements for information sharing can be mind-boggling, but help in on the way. The ODNI has developed a notebook that provides advice on the process for considering privacy as part of the dissemination of information in the Information Sharing Environment. [redacted] An appendix to the notebook describes pertinent information sharing statutes, directives and policies. For questions or assistance with these matters, of course, you should feel free to contact the Privacy and Civil Liberties Unit. Our contact information can be found at [redacted]

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72



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## DIOG Section 14: Overview Retention and Sharing of Information

- All information sharing with a foreign government related to classified national security and foreign intelligence must adhere to the FBI Foreign Dissemination Manual effective 05/23/2008 and effective policies governing an MOU
- Dissemination of information acquired under the FISA is, to the extent provided in that Act, subject to minimization procedures and other requirements specified in that Act. Information obtained through the use of NSLs may be disseminated in conformity with statutory obligations or limitations, and the general standards of AGG-Dom

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73

**Teaching Point:** For questions, consult the Office of the General Counsel  
Privacy and Civil Liberties Unit  
National Security Law Branch  
Investigative Law Unit



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## DIOG Section 14: Overview Retention and Sharing of Information

- For questions about privacy concerns



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74



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## DIOG Section 14: Retention and Sharing of Information

- **Information Management and Retention**
- AGG-Dom Requires:
  - Maintenance of records in "database or system of records"
  - Prompt retrieval of information regarding the status of investigations
  - Retention of records according to a retention plan approved by NARA

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75

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 [Redacted] Scenario

- [Redacted]
- What should be done with this information?

UNCLASSIFIED//FOUO 76

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**Teaching Points:** This is a vague threat which may not rise to the level warranting an assessment or investigation.

During an assessment the FBI may seek information, proactively or in response to investigative leads, relating to activities constituting violations of federal criminal law or threats to the national security.

You can run US Government database checks on John Smith even though you do not initiate an assessment. Document in a FD-71 and place in appropriate zero file.

An FBI employee can search historical information already contained within: (i) FBI data systems; (ii) United States Intelligence Community (USIC) systems to which an FBI employee has access [Redacted]

[Redacted] (iii) any other United States Government database to which an FBI employee has access; and (iv) the FBI employee can also conduct open-source Internet searches without initiating an assessment (open-source Internet searches do not include any paid-for-service databases such as Lexis-Nexis and ChoicePoint).

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DIOG 5.1

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Scenario

- What action can be taken?

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b7E

**Teaching Points:** You should consider opening an Type 2 Assessment to determine if the employee is a threat to agency personnel based upon two concerned people reporting possible "threats" to agency personnel.

The facts meet the standards for initiating an assessment.

Authorized purpose and objective

Not based on protected activities

Appropriate use of personnel and resources

**DIOG 5.5**

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  Scenario

- 
- Is this okay?

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Teaching Points:

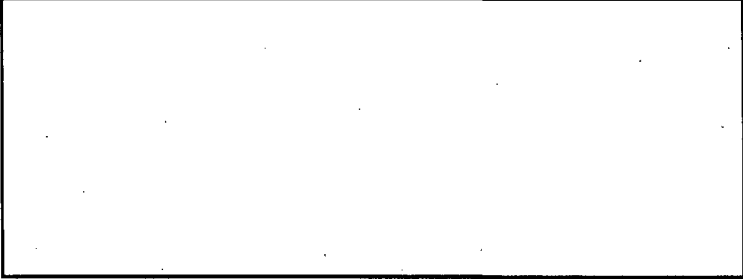
  
  
 DIOG 5.9 H

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However, as tasking the CHS may be considered a more intrusive method under these circumstances, you should consider all approved methods such as checking police records and interviewing other former coworkers at the agency. DIOG 4.4 A

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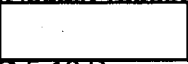
  Scenario



- Do you approve the trash cover?

UNCLASSIFIED//FOUO 79

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**Teaching Points:** The following methods may not be used in an assessment:  
Physical searches of personal or real property where a warrant or court order  
is not legally required because there is no reasonable expectation of privacy  
(e.g.   are not authorized in assessments.

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DIOG 5.10 B

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  Scenario

- 
- Can he do this?

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b7E

**Teaching Points:** FGJ subpoenas for telephone toll records are not allowed in assessments. **(As a reminder: the use of a FGJ subpoena is generally considered one of the more intrusive methods in an assessment)** DIOG 5.9 I

If a PI had been initiated, the use of FGJ subpoenas for toll records would be authorized.

In assessments, surveillance can be approved for only 72 hours at a time by the SSA. **DIOG 5.9 B 2 b**

Surveillance can be conducted, but the question of whether this an **appropriate use of resources should be considered.**

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  Scenario

- 
- What needs to be done?

UNCLASSIFIED//FOUO 81

b7E

**Teaching Points:** Do you think you have enough information to predicate an investigation? Based on the facts you should consider a PI, possibly a federal blackmail/extortion violation as a demand (being rehired) has been presented. Trash covers are authorized in predicated investigations. **The decision to open a particular type of investigation should be based on the predicate and not on the types of methods that can be used.**

Scenario

- [Redacted]
- Can you approve this?

UNCLASSIFIED//FOUO 82

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Teaching Point:

[Redacted]

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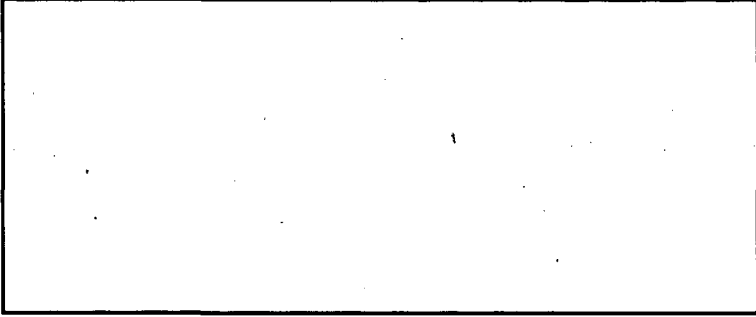
Now you could consider obtaining a FGJ subpoena for toll records.  
DIOG 6.9 B 12

UNCLASSIFIED//FOUO



[Redacted]

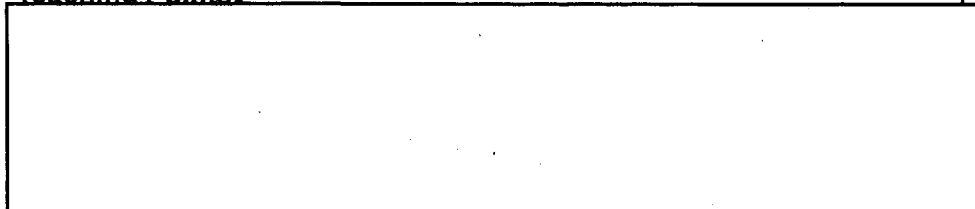
## Scenario



UNCLASSIFIED//FOUO 83

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### Teaching Points:



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DIOG 17.5 B.C

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[Redacted] Scenario

- [Redacted]
- Can these actions be taken?

UNCLASSIFIED//FOUO 84

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**Teaching Point:** You previously had enough predication to change the PI to a full when you learned of the proposed gun for drugs trade. You could likely obtain an arrest warrant but you want to identify drug associates.

A physical search requiring a court order can only be used in a full investigation. DIOG 7.9.T



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## Judge Scenario

- A Police Officer advised that Judge Johnson has been accepting bribes to dismiss drunk and disorderly (D&D) and Driving Under the Influence (DUI) charges.
- What action would you take?
- Assessment?
- Preliminary Investigation?
- Full Field Investigation?

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85

**Teaching Point:** Does the source of your information or the basis of that knowledge affect the predication?

For example, does information from a police officer who has first-hand knowledge vs. an anonymous caller with second hand knowledge affect your decision?

Threshold for PI is information or allegation of crime.

**Teaching Point:** Judge is considered a public official therefore this matter should be considered a SIM requiring prior CDC review and SAC approval.

Investigative Matter involving the activities of a domestic public official or political candidate (involving corruption or a threat to the national security), religious or political organization or individual prominent in such an organization, or news media, or any other matter which, in the judgment of the official authorizing an investigation, should be brought to the attention of FBI Headquarters and other DOJ officials. (AGG-Dom, Part VII.N)

**DIOG:** 10.2 Sensitive Investigative Matter (SIM)



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## Judge Scenario

- Based on the complaint, you are considering the following actions:
- Can the Case Agent conduct interviews?
- Can the Case Agent review police and court records?
- Can the Case Agent recruit and use human sources?
- Can the Case Agent issue a GJ subpoena for the judge's telephone and financial records?
- Can the Case Agent conduct surveillance of the judge?

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86

**Teaching Point:** In cases like this, an agent has a number of investigative methods available under the DIOG. When numerous authorized methods are available, a primary consideration should be to utilize the least intrusive method if operationally sound and effective. A determination of the least intrusive/more intrusive investigative methods is based on the individual circumstances of each case.

If you initiated a PI or Full Investigation-

No approval is required to interview or request information from members of the public and private entities.

FBI personnel may access and examine records maintained by and request information from, other state, local, tribal or foreign government entities or agencies.

Human sources may be recruited and used in conformity with AG Guidelines.

**DIOG 11**

If you initiated a Type 1 or Type 2 Assessment, only telephone and electronic subscriber records can be subpoenaed. Financial records cannot be subpoenaed in an Assessment.

SOG may be authorized for only one 72 hour period during an assessment and requires ASAC approval. Non-SOG surveillance can be approved for subsequent 72-hour periods.

**DIOG 5.9**



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## Judge Scenario

- Your case agent reviews police and court records and believes there seems to be a comparably high number of D&D and DUI dismissals by the judge.
- Your case agent begins to interview several of the individuals whose cases have been dismissed.

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87

**Teaching Point:** Are interviews considered the least intrusive method? What other investigative options might you consider?

FGJ Bank records? Pen Register? UCE? Surveillance? Pole camera?

**DIOG 6.8, 7.8**



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## Judge Scenario

- A newspaper article appears entitled "FBI pursuing corruption investigation of Judge." The article describes how a long term judge with no known past improprieties is currently under investigation. Several people have been approached by the FBI to be interviewed concerning their court cases.
- Does this affect how the investigation proceeds?

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88

**Teaching Point:** Although the interviews may be regarded as a "least intrusive" they have quickly turned a non-public investigation into a publicized one. The publicized nature of the case may alter your investigative options and decisions.



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## Judge Scenario

- The newspaper article prompts several more witnesses to come forward with information supporting the allegations. The witnesses advise they each paid the judge in his chambers after hours after receiving a notice in the mail to appear in chambers. One witness has an appointment with the judge tomorrow night and is willing to wear a wire.
- What issues do you consider?

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89

**Teaching Point** If we approve consensual monitoring the meeting with the Judge, would this be a "Sensitive Monitoring Circumstance"? SMC only applies to Federal Judges or a Justice of the Highest Court of the State.

Consider polygraphing the witness prior to further action.

A Electronic Surveillance is an accepted method of investigation for a predicated full investigation. **DIOG 11.12.1**

ELSUR is the non-consensual electronic collection of information (usually communications) under circumstances in which the parties have a reasonable expectation of privacy and court orders or warrants are required. **DIOG 11.12.3**

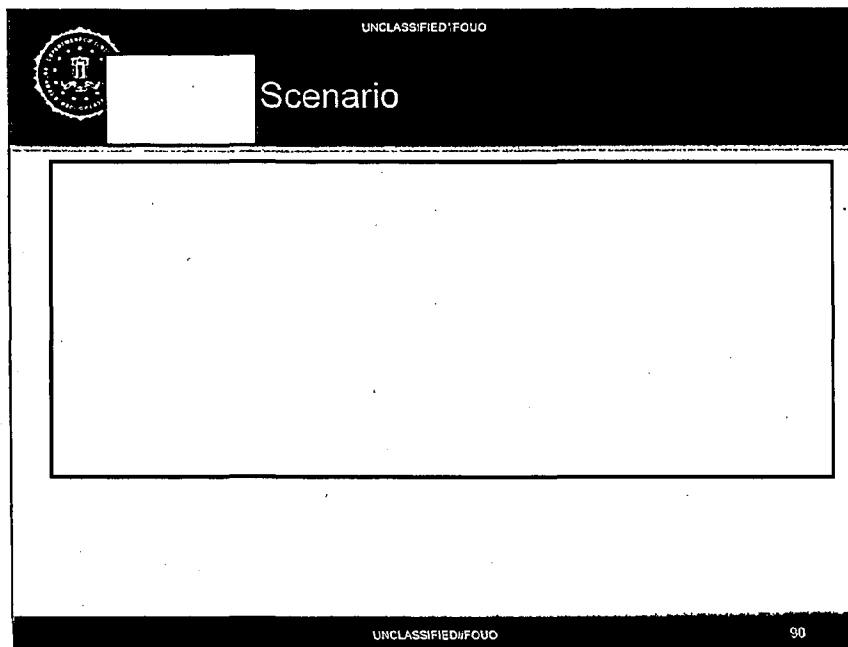
Even though this is not a SMC, consider informing your AUSA of your plan to record a judicial official.

### **DIOG 11.5.4 B.3**

#### **Sensitive Monitoring Circumstance:**

Requests to consensually monitor communications when a sensitive monitoring circumstance is involved must be approved by the DOJ Criminal Division, or if the investigation concerns a threat to the national security or foreign intelligence collection, by the DOJ NSD. (AGG-Dom, Part V.A.4) A "sensitive monitoring circumstance" is defined in the AGG-Dom, Part VII.O, to include the following:

- a. Investigation of a member of Congress, a federal judge, a member of the Executive Branch at Executive Level IV or above, or a person who has served in such capacity within the previous two years (**Note:** Executive Levels I through IV are defined in 5 U.S.C. §§ 5312-5315);
- b. Investigation of the Governor, Lieutenant Governor, or Attorney General of any state or territory, or a judge or justice of the highest court of any state or territory, concerning an offense involving bribery, conflict of interest, or extortion related to the performance of official duties



**Teaching Point:** [redacted] Guardian or  
on a FD-71.

**DIOG 5.6A 1 & 2**

Do you have enough information to initiate an assessment? Not only do you need an authorized purpose but you also need a clearly stated objective.

Assessments authorized under the AGG-Dom **do not require particular factual predication but do require an authorized purpose.** Assessments may be carried out to detect, obtain information about, or prevent or protect against federal crimes or threats to the national security or to collect foreign intelligence

**DIOG 5.1**

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Scenario

- Alternate scenario:

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91

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Teaching Point: Teaching Point:

☐ Guardian or on a FD-71.

**DIOG 5.6A 1 & 2**

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Do you have enough information to initiate an assessment?

Assessments authorized under the AGG-Dom do not require particular factual predication but do require an authorized purpose and a clearly stated objective. Assessments may be carried out to detect, obtain information about, or prevent or protect against federal crimes or threats to the national security or to collect foreign intelligence.

**Would it be an appropriate use of personnel and resources to conduct an assessment on this information?**

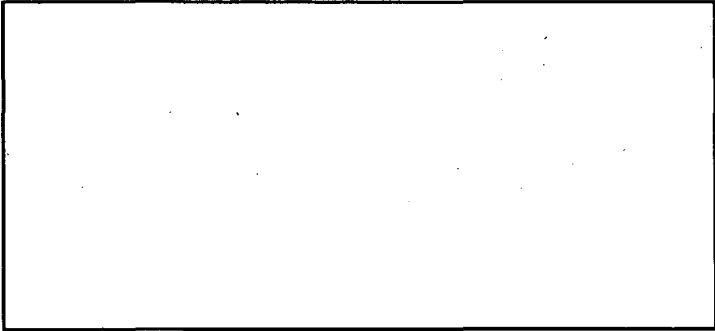
**DIOG 5.1**

Does the time of day or evening effect your decision? This may be suspicious activity, but consider **if there is enough information for an assessment.**

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Scenario

- You decided not to initiate an assessment with the limited information provided.
- 

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Questions on next slide

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  Scenario

- 
- 

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**Teaching Point:**  Guardian.  
 Guardian should be placed in the

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**DIOG 5.6 A**

An FBI employee can search historical information already contained within data systems, USIC systems to which the employee has access, any other US Govt. database which the employee has access, and the employee can also conduct open-source Internet searches without initiating an assessment (does not include any paid-for-service databases)

**DIOG 5.1**

Is there enough information to initiate an assessment? There may be enough information to open a Type 1 Assessment on activity of the UNSUBS in the vehicle since you now have a tag number for the vehicle.

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Scenario



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Teaching Point

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There is not enough information to open a PI or an assessment on MAGNY **based on the protest information** because the information about **the protests concerns protected activities**. An assessment on MAGNY could also be considered since the vehicle near the bridge with the UNSUBS is registered to MAGNY.

DIOG 5.1

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  Scenario

- Are the agent's actions okay?
- Does the new information affect your decision to open an assessment or a predicated investigation?

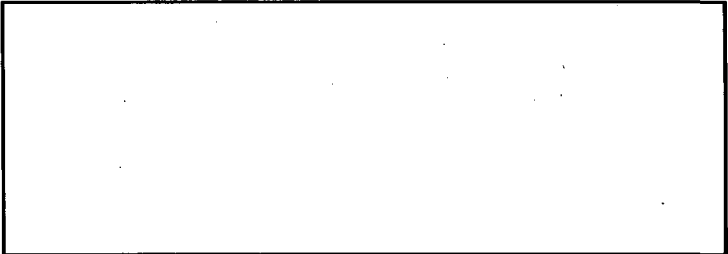
UNCLASSIFIED//FOUO 95

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**Teaching Point:** Paid-for-service database checks cannot be run prior to the initiation of an assessment or a predicated investigation. If ChoicePoint was run without an assessment or PI being opened, this would be a DIOG violation. **If an assessment had been initiated on the UNSUBS, this action would be permissible.**

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 Scenario

- The agent initiates a Type 1 Assessment on the activities of the UNSUBS.
- 
- Would you initiate an assessment or PI on Khomeen?

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**Teaching Point:** You could initiate a PI on Khomeen because there is **"information or an allegation"** that he could be a threat to national security with the information received from the other agency.

Is there an authorized purpose and objective for a PI? Yes, based on the suspicious bridge activity and his background.

**DIOG 5.5A**

Is the assessment based on factors other than the exercise of First Amendment activities or the race, ethnicity, national origin, or the religion of the subject? Yes **DIOG 5.5 B**

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## Scenario

- Do you approve the request to polygraph the CHS?

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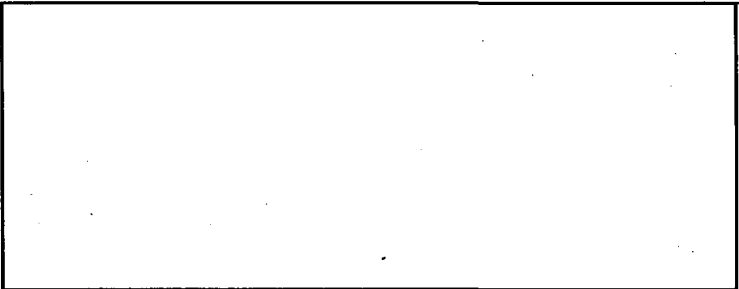
**Teaching Point:** Polygraph examinations are not authorized during assessments, however they are authorized in predicated investigations. If you had opened a PI, the use of the polygraph would be authorized. The polygraph in the PI could be approved by the SSA.

**DIOG 5.10 E**

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## Scenario



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Questions on next slide

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  Scenario

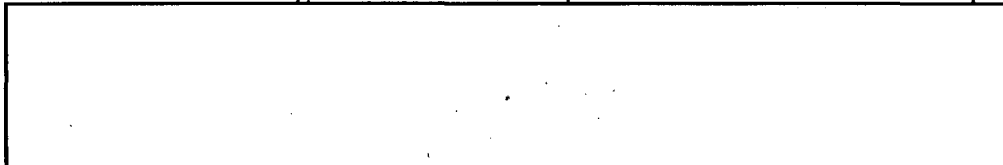
- Does this information give you enough along with the collection requirement to open an assessment on MAGNY?
- If yes, what type of assessment could be initiated?

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**Teaching Point:** The difference between the types of assessments is based on the authorized purpose and the objective of the assessment.

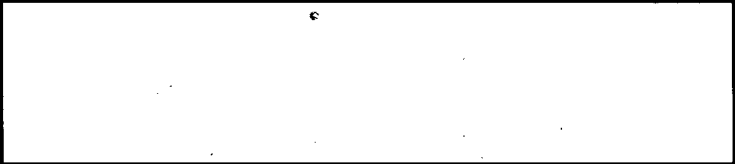
You could initiate a Type 2 Assessment or a 



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  Scenario



- What do you do with this information?

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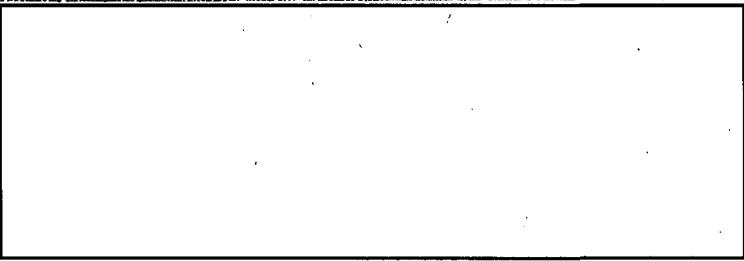
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**Teaching Point:** Regardless of what type of assessment (Type 2 or Type 3 or both) is opened, consider preparing an IIR to be 

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  Scenario

- 
- What do you do with this information?

UNCLASSIFIED//FOUO 101

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**Teaching Point:** You can disseminate information through the Office of International Operations (OIO) via an EC if the dissemination is consistent with the interests of the United States 

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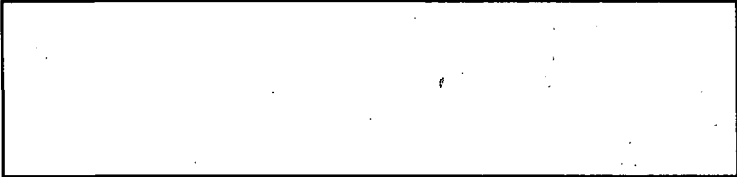
  
**DIOG 14.3**

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 Classified information is disseminated pursuant to the FBI Foreign Dissemination Manual.)

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  Scenario

- 
- What is your response? What do you do with this information?

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Teaching Point:



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DIOG 5.9 F 4 e, f, and g p. 64

If this were a UCO, UCOs are not allowed in Assessments – only in predicated investigations (PI or Full). DIOG 5.10 F Undercover Operations

Teaching Point:



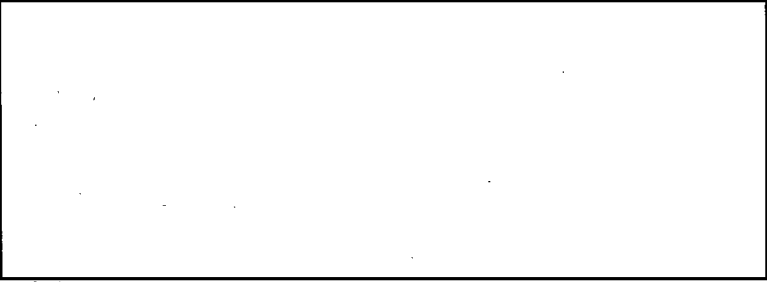
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DIOG 16.4 B

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Scenario



- What do you do with this request?

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**Teaching Point:** You have information or allegation to predicate a PI on MAGNY.

You can also use the preliminary investigation to determine whether a group or organization is a criminal or terrorist enterprise/organization.

**DIOG 8.2**

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Scenario

- 
- Case agent submits a request to conduct a search of the leadership offices at MAGNY.
- What do you do with this request?

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**Teaching Point:** You cannot conduct a search during a preliminary investigation. With the additional information you have received **regarding MAGNY's leadership, you have enough to convert to a full investigation.** Once a case is converted to a full investigation, all authorized methods are allowed, e.g. FISA search. However just because the technique is allowed, you must still consider the least intrusive means principle. Under the facts of the case presented, a FISA search may be more intrusive than others that could be used (e.g. NSLs for financial records.)

Regarding the FISA request, even in Full Investigations, you must consider the least intrusive investigative methods.

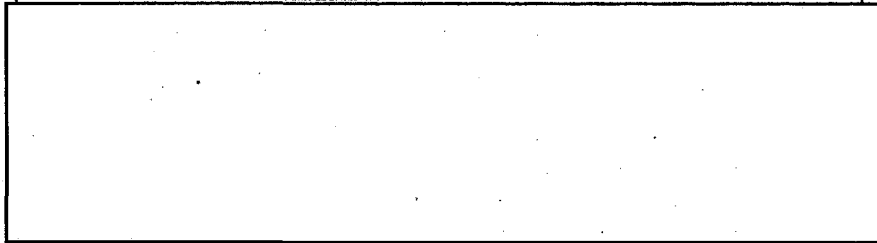
**DIOG 4.4 A**

Would you consider opening this as an EI at this time?



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## DIOG Train the Trainer Course Next Steps

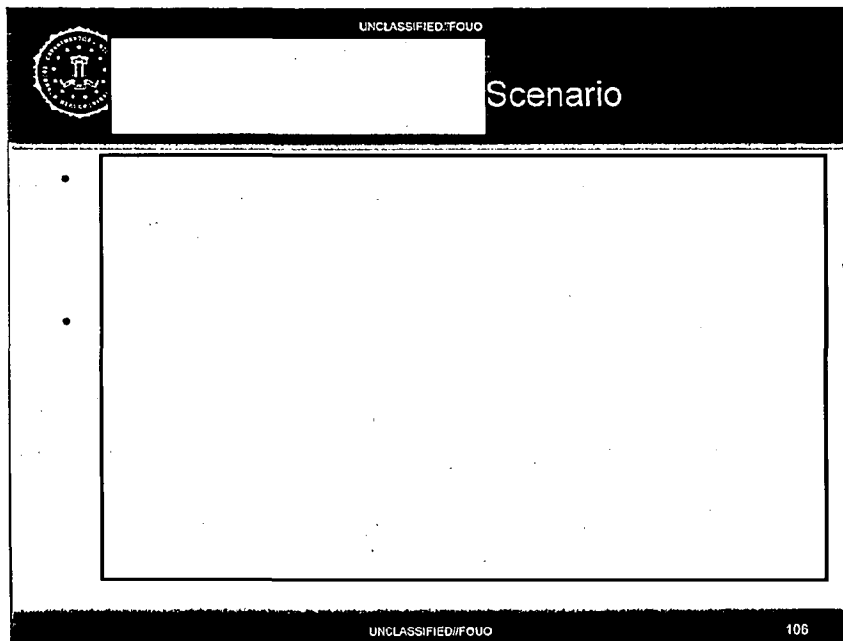


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105



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**Teaching Point:** Assessments in this section may include activities designed to collect information for domain analysis that is focused on identifying targets of or vulnerabilities to criminal conduct or threats to the national security. FBIHQ directed National Domain Assessments must be coordinated in advance with the FBIHQ DI, Domain Management Section (DMS).

Could this have been a Type 6 Assessment?

**DIOG 5.6 A 3**

You should consider what investigative method the agents are utilizing when they have lunch at the restaurant or do they just like Chinese food?

**DIOG 5.9 F**

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Scenario

- [Redacted]
- What action would you take?

UNCLASSIFIED//FOUO 107

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**Teaching Point:** When the Type 3 Assessment begins to focus on an individual, you must initiate a separate substantive classification file on that person, or open a predicated investigation. Opening an additional Type 3 Assessment on Fong requires an EC. The Type 3 Assessment would be investigated by the appropriate substantive squad.

**DIOG 5.6 A 3 d, 6.7 A, and 7.7 A**

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Scenario

- What action would you take?

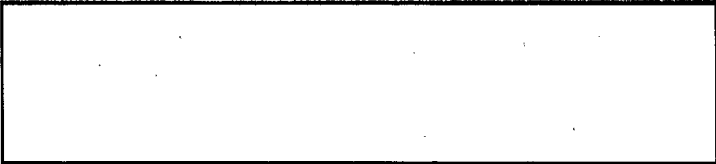
UNCLASSIFIED//FOUO 108

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**Teaching Point:** You now have predication to open a PI or FI on Fong and Tso.

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 Scenario

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• What action would you take?

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**Teaching Point:**

Re Group I UCO proposal – is a UCO the least intrusive method feasible, then under the FGUCO it would be a Group II. Just Introducing UCE is not UDP— but it may become UDP if UCE is tasked.

Re Mail Cover – would be permitted in a PI or Full – consider if it is least intrusive

Re FISA on fax – permitted only in a Full Investigation

**DIOG 6.9 and 7.9**